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Paper No. 5

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**OCT 13 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Hundhausen et al. :  
Application No. 10/063,317 : ON PETITION  
Filed: 10 April, 2002 :  
Attorney Docket No. roswell :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 16 August, 2004.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

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<sup>1</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 23 June, 2002, for failure to timely submit an oath or declaration, a surcharge for its late filing, and substitute drawings in compliance with 37 CFR 1.84, as required by the Notice to File Missing Parts of Nonprovisional Application mailed on 22 April, 2002, which set a two (2) month shortened period for reply. Notice of Abandonment was mailed on 4 December, 2003.

On 16 August, 2004, the present petition was filed, accompanied by a declaration and a surcharge for its late filing.

The petition is dismissed because it lacks the required reply. Specifically, the substitute drawings required by the Notice mailed on 22 April, 2002, have not been provided. In order for a petition to revive to be grantable, the reply must address all of the requirements of the outstanding Office communication. Since the Notice mailed on 22 April, 2002, required substitute drawings, such drawings must be provided with a grantable petition to revive.

It is also noted that petitioner submitted the surcharge in the large-entity amount of \$130.00, although the statutory basic filing fee submitted on 10 April, 2002, and the petition fee paid on 16 August, 2004, were submitted in the small entity amount. Petitioner should confirm whether the surcharge was paid in the proper amount. If the surcharge was due in the small-entity amount, petitioner may request a refund of the amount paid in excess.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (703)872-9306  
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S.  
Customer Window, Mail Stop Petition  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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